IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Kala @ Kharabanga @ Rajveer & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.1249/2002)

2. Jagdish Vs. State of Rajasthan
(D.B. Criminal Appeal No.1010/2007)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 28-8-2002 in Sessions Case No.51/2001 (103/2001) passed by Shri Anil Kumar Suroliya, RHJS, Additional Sessions Judge (Fast Track) Jhunjhunu.

Date of Judgment: July 13, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. B.M. Sharma, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated August 28, 2002 of the learned Additional Sessions Judge (Fast Track) Jhunjhunu, whereby the appellants, five in number, were convicted and sentenced as under:-

Appellants Kala @ Kharabanga @ Rajveer, Krishna Kumar, Hava Singh and Jagdish
U/s.460 IPC:
Each to suffer imprisonment for life and fine of Rs.2000/-, in default to further suffer two months rigorous imprisonment.

U/s.395 IPC:

Each to suffer imprisonment for life and fine of Rs.2000/-, in default to further suffer two months rigorous imprisonment.

U/s.397 IPC:

Each to suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer one month rigorous imprisonment.

U/s.398 IPC:

Each to suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer one month rigorous imprisonment.

Appellant Kala @ Kharabanga @ Rajveer:
U/s.3/25 Arms Act:

To suffer rigorous imprisonment for three years and fine of Rs.500/-, in default to further suffer fifteen days simple imprisonment.

Appellant Smt.Krishna:
U/s.412 IPC:

To suffer rigorous imprisonment for three years and fine of Rs.500/-, in default to further suffer fifteen days simple imprisonment.

Sentences were directed to run concurrently.

2. On December 21, 2000 at 3.30 AM Deva Ram SI (Pw.20) reached to the General Hospital Chirawa and recorded parcha bayan (Ex.P-1) of injured Satya Narayan (Pw.1) wherein he stated that on the said night around 1 AM his sleep was disturbed. He noticed some one walking on his roof. He got up and came out. No sooner did he reach the staircase, one tall person inflicted lathi blow on his head, on hearing his shouts his son Sunil came over there. The miscreants gave beating to his son also. Telephone line of his house was disconnected. There were as many as five-six miscreants who inflicted blows on the person of his wife also and took valuables with

them. He could identify those miscreants. Satya Narayan handed over a list of valuables (Ex.P-2) to the police which contained golden ornaments, silver coins, silver utensils, wrist watches, two-in-one, Driving licence etc. On the basis of parcha bayan case under sections 395, 397 and 398 IPC and 3/25 Arms Act was registered and investigation commenced. On completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Jhunjhunu. Charges under sections 460, 395, 397 398 IPC and 3/25 Arms Act were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 24 witnesses. In the explanation under section 313 Cr.P.C., the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. It is contended by learned counsel for the appellants that no case against the appellants was established and they have been implicated only on the basis of suspicion. After the arrest of the appellants they were shown to the witnesses and identification parade was farce. We have been taken through the testimony of witnesses.

4. Before considering the statements of prosecution witnesses, we deem it necessary to have a look at the injuries sustained by the witnesses at the time of incident. Injury report of Sunil (Pw.4) reads as under:-

1. Contusion painful tenderness Rt. forearm
2. Contusion Lt. forearm
3. Lacerated wound Lt. toe.
4. Lt. cheek

5. Lacerated wound upper lip 1½ x ½ x ½
6. Lacerated wound Lt. cheek ½ x 1/3 x ½
On X-ray R.forearm chip was found fractured.

5. Ratni Devi (Pw.2) vide injury report (Ex.P-66) received following injuries:-

1. Incised wound Rt. parietal skull
2. Contusion Rt. forearm
3. Contusion Lt. forearm
On x-ray fracture was found of Rt. ulna.

6. Injuries received by Satya Narayan (Pw.1) have been incorporated in the injury report (Ex.P-70) that reads as under:-

1. Incised wound Rt. posterior area of skull.
2. Incised wound Rt. occipital area of scalp
3. Contusion Rt. forearm
4. Abrasion Lt. fronto parietal region
5. Abrasion Rt. infra parietal region.
6. Abrasion Rt. Dorsal of hand
7. Balckening
On x-ray fractures of II, III and IV Metacorpal was found.

7. It is thus evident that the miscreants after committing house tress pass by night inflicted injuries with sharp edged weapons and fire arms. A further look at the material on record demonstrates that on the basis of disclosure statements of appellants the stolen property was recovered and it got identified by Satya Narain before the Magistrate. Satya Narain put his signatures on the identification memos Ex.P-4, P-5, P-6, P-7 and P-8. The goods were also identified by Ratni Devi (Pw.2). Sh. Madhu Sudan Sharma Judicial Magistrate Jhunjhunu (Pw.23) testified the identification so made by the witnesses. Rameshwar Lal Bagadiya IO (Pw.24) deposed that he got the

recovery of stolen property effected from the appellants. Ornaments and other stolen property (Articles 1 to 66) were shown to Ratni Devi in the trial court and she deposed that all the articles belonged to her.

8. Appellants Kala, Hawa Singh, Krishna Kumar and Jagdish were identified by witnesses Satya Narain and Sunil in the Identification Parade and put their signatures on the identification memos Ex.P-89, P-95, P-97 and P-99. Sh. Madhu Sudan Sharma Judicial Magistrate (Pw.23) deposed that identification parade was conducted according to the rules.

9. Sunil (Pw.4) at the trial pointing out his finger at appellant Kala, deposed that he caught hold of Kala and it was Kala who opened fire at him that hit at his cheek and left hand. Dr.L.K.Sharma (Pw.14) was posted as Medical Jurist in Govt. Hospital Chirawa on December 21, 2000. He examined the injuries sustained by Sunil and drew injury report Ex.P-60. He found injuries caused by pellets on the person of Sunil. Injury No.1 was grievous in nature and injury No.4 was dangerous to life. Injury No.2 received received by Ratni Devi on right ulna was also grievous in nature. Satya Narain also sustained fractures on right ulna. The injuries incorporated in the medical reports of Staya Narain (Pw.1) and Ratni Devi (Pw.2) gets corroboration from their ocular testimony.

10. We have closely scrutinised the cross examination of Satya Narain, Ratni Devi, Sunil, Dr.L.K.Sharma, Sh.Madhu Sudan Sharma, JM and Rameshwar Lal Bagadiya. We noticed minor contradictions in their testimony. However on examining their evidence from the point of view of trustworthiness we find them reliable. We see no merit in the submission of learned counsel for the appellants that the appellants were falsely implicated

in the case.

11. Section 460 IPC merely provides for constructive liability of persons committing or concerned in inter-alia, house-breaking by night in the course of which death or grievous hurt is caused by one of the offenders and it prescribes enhanced penalty for the joint offenders. In the instant case prosecution is able to establish charge under section 460, 395, 397 and 398 IPC against the appellants Kala, Krishna Kumar, Hava Singh and Jagdish. Charges under section 3/25 Arms Act against appellant Kala and under section 412 IPC against appellant Smt.Krishna are also proved beyond reasonable doubt. 12 Bore Katta got recovered vide recovery memo (Ex.P-50) at the instance of appellant Kala in the presence of Motbirs Pabu Dan Singh (Pw.11) and Subhash Chandra (Pw.12). Mahaveer Singh Armorer (Pw.18) examined 12 Bore Katta and gave report Ex.P-85 stating therein that it was serviceable fire arm. District Magistrate vide Ex.P-113 accorded sanction to prosecute appellant Kala under section 3/25 Arms Act. Smt. Krishna was arrested on January 23, 2001 vide arrest memo (Ex.P-81). She gave information under section 27 Evidence Act which was recorded in Ex.P-105 and Ex.P-106. On the basis of said disclosure statements golden chain, golden necklace and silver anklets got recovered.

12. We see no illegality in the impugned judgment of learned trial Judge and in our considered opinion the appellants were rightly convicted and sentenced.

13. For these reasons, we do not find any merit in the instant appeals and the same accordingly stand dismissed. Conviction and sentence awarded to appellants Kala @ Kharabanga @ Rajveer, Krishna Kumar,

Hava Singh and Jagdish under sections 460, 395, 397 and 398 IPC are maintained. Conviction and sentence awarded to appellant Kala @ Kharabanga @ Rajveer under section 3/25 Arms Act also stand maintained.

We also maintain conviction and sentence awarded to appellant Smt.Krishna under section 412 IPC. Bail bonds of Smt.Krishna stand cancelled and she be taken into custody forthwith for serving out the sentence awarded to her.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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